



BILLING CODE: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is establishing the charter for the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“the Judicial Proceedings Panel”).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

SUPPLEMENTARY INFORMATION: This committee’s charter is being established under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (“the Sunshine Act”), and 41 CFR 102-3.50(d).

The Judicial Proceedings Panel is a non-discretionary Federal advisory committee that will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act of Fiscal Year 2012 (“the FY 2012 NDAA”) (Pub. L. 112-81) for the purpose of developing recommendations for improvements to such proceedings. The Judicial Panel shall:

- a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
- b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
- c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
- d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
- e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under 10 U.S.C. 832 (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.
- f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.
- g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal

advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.

- h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.
- i. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.
- j. An assessment of the likely consequences of amending the definition of rape and sexual assault under 10 U.S.C. 920 (article 120 of the UCMJ), to expressly cover a situation in which a person subject to the UCMJ, commits a sexual act upon another person by abusing one's position in the chain of command of the other person to gain access to or coerce the other person.
- k. An assessment of the implementation and effect of the Special Victim's Counsel for victims of sex-related offenses established by 10 U.S.C. 1044e, as added by section 1716 of the FY 2014 NDAA, and make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.
- l. An assessment of the implementation and effect of the mandatory minimum sentences established by 10 U.S.C. 856(b) (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include

dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under 10 U.S.C. chapter 47 (the UCMJ).

- m. An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under 10 U.S.C. chapter 47 (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
 - i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
 - ii. Including bodily harm among the injuries meriting compensation for redress under 10 U.S.C. 939 (article 139 of the UCMJ).
 - iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.
- n. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information that the Judicial Proceedings Panel considers necessary to carry out its duties.

Pursuant to sections 576(b)(1)(B) and (b)(2) of the FY 2013 NDAA, the Judicial Proceedings Panel shall be appointed by the Secretary of Defense and consist of five members, two of whom must have served on the Response Systems to Adult Sexual Assault Crimes Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Judicial Proceedings Panel.

Members shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewals. Any vacancy on the Judicial Proceedings Panel shall be filled in the same manner as the original appointment. Panel members shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem, Judicial Proceedings Panel members shall serve without compensation.

The DoD General Counsel, according to DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel's total membership nor do they have voting privileges. In addition, these subject matter experts, when appointed, shall not participate in any discussions dealing with the substantive matters before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

The DoD, when necessary and consistent with the Judicial Proceedings Panel's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD General Counsel as the DoD Sponsor.

These subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all of their recommendations and advice to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Judicial Proceedings Panel directly to the DoD or any Federal officer or employee.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants under the authority of 5 U.S.C. 3109 to serve as SGE members. Subcommittee members shall serve for the life of the subcommittee. With the exception of travel and per diem for official travel related to the Judicial Proceedings Panel or its subcommittees, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Judicial Proceedings Panel's Designated Federal Officer (DFO), pursuant to the DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed, in accordance with governing the DoD policies and procedures.

In addition, the Judicial Proceedings Panel's DFO is required to be in attendance at all meetings of the Judicial Proceedings Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Judicial Proceedings Panel's DFO, a properly approved Alternate DFO, duly appointed to the Judicial Proceedings Panel according to the DoD policies and procedures, shall attend the entire duration of the Judicial Proceedings Panel and its subcommittee meetings.

The DFO, or the Alternate DFO, shall approve all of the meetings of the Judicial Proceedings Panel and its subcommittees called by the Chair; prepare and approve all meeting agendas; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public interest or required by governing regulations or the DoD policies and procedures.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel membership about the Judicial Proceedings Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Judicial Proceedings Since Fiscal Year 2012 Amendments Panel.

All written statements shall be submitted to the Designated Federal Officer for the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel's

Designated Federal Officer can be obtained from the GSA's FACA Database –

<http://facadatabase.gov/>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: June 24, 2014.

Aaron Siegel,
Alternate OSD Federal Register
Liaison Officer,
Department of Defense.

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